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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

KERRY CUMMING,

Plaintiff,

-vs-

NO: 1:17-cv-00376 KG-KBM

QUESTA SCHOOL BOARD OF EDUCATION and QUESTA  
INDEPENDENT SCHOOLS,

Defendants.

DEPOSITION OF ROY HERRERA

January 25, 2018  
3:00 p.m.  
645 Don Gaspar Avenue  
Santa Fe, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: TIM WHITE  
ATTORNEY FOR PLAINTIFF

REPORTED BY: Jan Gibson, CCR, RPR, CRR  
Paul Baca Court Reporters  
500 Fourth Street, NW - Suite 105  
Albuquerque, New Mexico 87102

EXHIBIT

4

tables\*

PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102

1 they didn't discuss that, is my understanding. So  
 2 I'm not sure how to deal with this but I wanted to  
 3 get this out on the table.

4 MR. WHITE: I'm going to move on and I  
 5 will figure out what to do with that later.

6 MS. GURULE: I will also concur with that  
 7 recitation as accurate. As far as my recollection  
 8 of the events as well is just the conversation was  
 9 to determine whether representation of Mr. Herrera  
 10 could occur by myself concurrently with the  
 11 District.

12 Q (By Mr. White) Mr. Herrera, did you review  
 13 any documents to prepare for your testimony here  
 14 today?

15 A. Yes.

16 Q. What did you review?

17 A. I reviewed the complaint and also my  
 18 statement.

19 Q. And what statement are you referring to?

20 A. Statement A.

21 Q. Is this a statement --

22 A. My statement.

23 Q. -- that you provided in response to my  
 24 client's EEOC charge, do you know?

25 A. It was a response to an attorney, Ramon

1 Vigil. He had asked me to give a statement.

2 Q. Okay. I think we're going to get to that.  
 3 Did you review anything else before you came in here  
 4 today?

5 A. No.

6 Q. Just those two documents?

7 A. Correct.

8 Q. How long have you been employed at the  
 9 Santa Fe Indian School, sir?

10 A. Since June of 2013.

11 Q. And you resigned from Questa August 20,  
 12 2012; is that correct?

13 A. Correct.

14 Q. Between August 20, 2012 and June 2013,  
 15 were you employed?

16 A. No.

17 Q. Was that because you weren't trying to  
 18 find a new position or was it because it took that  
 19 long to find a new position?

20 A. I was not interested in a position.

21 Q. You just -- what caused you to come back  
 22 to work then with Santa Fe Indian School?

23 A. The interest in the position that was  
 24 being offered.

25 Q. And how old are you, sir?

1 A. Sixty-three. Sixty-four.

2 Q. And what is your ethnicity?

3 A. I am Hispanic.

4 Q. On both sides of your family or just one?

5 A. Both.

6 Q. When you were the superintendent in  
 7 Questa, do you know, just your best estimate for me,  
 8 if you would, how many employees the district had?

9 A. I do not recall.

10 Q. Was it more than four?

11 A. Yes.

12 Q. Are you certain of that?

13 A. Yes.

14 Q. As far as the school, the Alta Vista

15 School there in the Questa school district, do you  
 16 know the ethnicity of the employees there in terms  
 17 of were more folks Hispanic, Anglo, African  
 18 American, Native American? Can you give me your  
 19 perspective on that?

20 MS. GURULE: Objection, form, foundation.

21 MR. COPPLER: When objections are stated  
 22 you may answer the question without delay unless I  
 23 instruct you not to answer, which will probably not  
 24 be likely.

25 A. I had never seen the population ethnicity.

1 Visually is my only recollection.

2 Q. Yes, sir. That's fair.

3 A. And that would be primarily Hispanic.

4 Q. Why did you resign from Questa?

5 A. There was turmoil between the Board  
 6 itself, and I felt that the PED, Public Education  
 7 Department of New Mexico, had received several  
 8 complaints and was going to be potentially filing a  
 9 claim against Questa.

10 Q. They, in fact, did do that.

11 A. That's correct.

12 Q. You were quoted, I believe, by the PED as  
 13 saying that the District -- the priority of the  
 14 school district was not academics. Do you recall  
 15 making a statement like that?

16 A. Yes.

17 Q. What did you mean by that?

18 A. The Board was focused more on the physical  
 19 plant and involved in day-to-day activities.

20 Q. Say the last part again.

21 A. Involved in day-to-day activities.

22 Q. Meaning the board members were --

23 A. Correct.

24 Q. -- involving themselves with the  
 25 day-to-day activities?

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- 1 A. Correct.  
 2 Q. There was testimony to the PED in the  
 3 course of them suspending the Board from a previous  
 4 superintendent, a gentleman named Albert Martinez.  
 5 Do you know Mr. Martinez?  
 6 A. I did meet him.  
 7 Q. He complained in part about board members  
 8 interfering with hiring and firing issues. Do you  
 9 recall that ever happening when you were the  
 10 superintendent?  
 11 MS. GURULE: Object to form, foundation.  
 12 A. No.  
 13 Q. Did anyone ever contact you, a board  
 14 member, to say, "Hey, hire this person" or "Don't  
 15 hire that person"? Any sort of communications like  
 16 that?  
 17 A. No.  
 18 Q. Did the Board -- before you resigned on  
 19 August 20, 2012, did any board member request that  
 20 you resign?  
 21 A. No.  
 22 Q. Did anyone else request that you resign?  
 23 A. No.  
 24 Q. So that was your decision and only yours?  
 25 Is that fair?

Page 16

- 1 A. Yes.  
 2 Q. Since you've left Questa, have you had any  
 3 other professional interaction with Ms. Sanchez?  
 4 A. No.  
 5 Q. Do you have any sort of personal  
 6 relationship with her, socially, I mean?  
 7 A. No.  
 8 Q. Do you have any opinion about her  
 9 truthfulness or lack thereof?  
 10 A. My only work with Ms. Sanchez was she  
 11 interviewed for the position of principal at Alta  
 12 Vista Costilla. I was very impressed with her  
 13 abilities, with her general philosophy towards  
 14 education.  
 15 Q. So you don't have any basis to call into  
 16 question her credibility in any way from your  
 17 experience with her; is that fair?  
 18 A. No, I do not question it.  
 19 Q. When did you begin working as  
 20 superintendent there? Do you recall the date?  
 21 A. I don't recall the date, but I believe it  
 22 was either early June or could have been late May.  
 23 MR. WHITE: I apologize, Counsel. I only  
 24 brought three of each of these because that's the  
 25 norm.

Page 15

- 1 A. Yes.  
 2 Q. You were only there about eight weeks; is  
 3 that right? As superintendent, I mean?  
 4 A. Correct.  
 5 Q. Was there anything other than this, what  
 6 you thought was coming from the PED, that caused you  
 7 to resign?  
 8 A. I felt the Board was bickering between  
 9 each other in regards to me.  
 10 Q. Concerning you?  
 11 A. Well, concerning wanting me to go  
 12 different directions. And I didn't feel like they  
 13 were academic-oriented, it was more towards  
 14 facility. And I chose not to be a part of that.  
 15 Q. So was there -- and I understand what you  
 16 told me so far, of course, but is there any other  
 17 reason that we have not talked about that led you to  
 18 resign?  
 19 A. No.  
 20 Q. Did you ever have any work experience  
 21 before you became superintendent with Martha  
 22 Sanchez?  
 23 A. No.  
 24 Q. Did you only know Ms. Sanchez through the  
 25 work you did as superintendent for Questa?

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- 1 MR. COPPLER: I can look on the original.  
 2 (Note: Exhibit 1 marked.)  
 3 Q. (By Mr. White) Here is what we are going to  
 4 mark as Exhibit 1 to your deposition, Mr. Herrera.  
 5 It's a document titled Notice of Vacancy for the  
 6 school year of 2012/2013 for an elementary teacher.  
 7 Do you know if you were working at the time this  
 8 notice was made public? Working for Questa?  
 9 A. Yes.  
 10 Q. Do you recall this notice being something  
 11 that you put out there or was it something that was  
 12 in the works before you came?  
 13 A. I believe this was due to Ms. Sanchez  
 14 being selected as principal opened up her position  
 15 as teacher.  
 16 Q. Where had she been teaching?  
 17 A. At Costilla Elementary.  
 18 Q. Is there a reason that you know of why the  
 19 position is titled just Elementary Teacher as  
 20 opposed to a more specific position? A certain  
 21 grade or a certain topic?  
 22 A. I can only assume that the general posting  
 23 for an elementary teacher, should positions open up,  
 24 it's not restricted to just one school.  
 25 Q. I think I understand what you're saying,

5 (Pages 14 to 17)

1 but what I'm asking I think is a little bit  
 2 different. Perhaps I didn't phrase it properly.  
 3 This just asks for or describes a vacancy for an  
 4 elementary teacher. Do you know why it doesn't  
 5 specify first grade, fifth grade, math, reading,  
 6 something more specific than just the generic  
 7 elementary teacher?

8 A. Not specifically, but I would say that in  
 9 my experience many times there's a domino effect.  
 10 One teacher opening opens up, one within the  
 11 district applies for it, another opens up, and so in  
 12 my experience that's what has been the case.

13 Q. Is that just with Questa or generally as a  
 14 school administrator?

15 A. Generally as a school administrator.

16 Q. Were you involved in reviewing the  
 17 applications that came in as a result of this notice  
 18 of vacancy that we marked as Exhibit 1?

19 A. No.

20 Q. Who was, do you know?

21 A. I believe there was a screening committee.

22 Q. Do you know if that would be different  
 23 than the committee that ended up doing the  
 24 interviews of my client and Lisa Rael?

25 A. I do not know.

1 One (Note: Exhibit 2 marked.)

2 Q. Exhibit 2 to your deposition, Mr. Herrera.  
 3 Do you recognize this as the committee who did the  
 4 interviews for the applicants for this elementary  
 5 teacher position?

6 A. I don't recall seeing this form.

7 Q. You don't recall ever seeing it before?

8 A. Correct.

9 Q. Do you know if, in fact, these five people  
 10 whose names are listed here were the folks who  
 11 interviewed my client as a result of her application  
 12 for this vacancy?

13 A. I cannot confirm that.

14 Q. Were you present at any point during that  
 15 interview of my client, Kerry Cumming?

16 A. No.

17 Q. Do you know where the interview took  
 18 place?

19 A. No.

20 Q. Are you pretty certain that you were not  
 21 present in that same room when the interview was  
 22 taking place? Because I have some documentation  
 23 that indicates that you were there at least part of  
 24 the time. Do you think that's possible and you have  
 25 just forgotten it or do you believe you really were

1 not there?

2 A. I believe I was not there.

3 Q. If Ms. Sanchez was to testify to the  
 4 contrary, would you have any reason to dispute that?

5 MR. COPPLER: Object to the foundation.

6 MS. GURULE: Join.

7 A. I would say, to give you an example.

8 Q. Sure.

9 A. If it was at Alta Vista in the start of  
 10 school year, I was doing a walk-through. They may  
 11 have seen me. If it was at Costilla, same thing,  
 12 checking the school to make sure it was ready to go.  
 13 I was not in an interview.

14 Q. Do you know how this committee worked in  
 15 terms of putting forward a candidate to be hired?

16 And by that I want to ask you, is there any weight  
 17 given, any greater weight given to anyone's vote or  
 18 recommendation to anyone else on the committee? Do  
 19 you know how that process worked at that time?

20 A. Not in Questa but I can respond generally.

21 Q. Please.

22 A. The committee has a vote that they rank  
 23 applicants shared with the principal. The principal  
 24 has a final determination of the person that goes  
 25 into a position. The principal will meet with the

1 superintendent with the recommendation and move that  
 2 person forward.

3 Q. So generally speaking, if we were to apply  
 4 what you're telling me to these five committee  
 5 members that we have listed on Exhibit 2, everyone  
 6 would make recommendations or score the  
 7 interviewees, talk to Ms. Sanchez about that and  
 8 Ms. Sanchez brings a recommendation to you; is that  
 9 correct?

10 A. Based on my experience, yes. Not having  
 11 worked long in the Questa system, I can't verify  
 12 that that was their process.

13 Q. Do you know if that was the process for  
 14 this committee? Do you know if that's the way that  
 15 ended up happening?

16 A. I do not.

17 Q. Is that because you don't know or you  
 18 don't recall?

19 A. I don't know.

20 Q. Did you have a conversation with  
 21 Ms. Sanchez prior to either Ms. Cumming or Ms. Rael  
 22 being offered a job in terms of what her  
 23 recommendation would be?

24 MS. GURULE: Object to form.

25 A. The recommendation verbally on the phone

Page 22

1 was that Ms. Cumming was the recommendation for  
 2 Costilla. Shortly after that I got a phone call  
 3 from Ms. Cumming.

4 Q. So if I'm understanding your answer, you  
 5 never had a conversation with Ms. Sanchez about --  
 6 or did you have a conversation with Ms. Sanchez  
 7 about hiring Kerry Cumming? Do you recall?

8 A. The phone conversation.

9 Q. You had a phone conversation with  
 10 Ms. Sanchez where she recommended hiring  
 11 Ms. Cumming?

12 A. Correct.

13 Q. But, and I don't want to put words in your  
 14 mouth because I think you told me a minute ago, was  
 15 it Ms. Sanchez's recommendation that she be hired to  
 16 Costilla or Alta Vista or was that not decided?

17 A. The only position we had open was  
 18 Costilla.

19 Q. And that was to fill the slot that  
 20 Ms. Sanchez had been in; is that right?

21 A. Correct.

22 Q. So let me ask you this from a general  
 23 standpoint first, based on your experience as school  
 24 administrator in New Mexico. In fact, let me ask  
 25 you this: Have you worked as a school administrator

Page 22

Page 24

1 (Note: Exhibit 3 marked.)

2 Q. Let me show you what we have marked as  
 3 Exhibit 3, Mr. Herrera. Do you recall seeing that  
 4 document before?

5 A. It looks familiar.

6 Q. Do you know if you would have reviewed  
 7 this prior to the discussion with Ms. Sanchez where  
 8 she recommended hiring my client?

9 A. I don't recollect the timeline.

10 Q. Do you know, would it have been -- do you  
 11 recall, it would it have been the practice for you  
 12 to have reviewed this before an offer was made to  
 13 either Ms. Rael or Ms. Cumming?

14 A. I don't recall in the Questa case, but I  
 15 knew that there were two applicants.

16 Q. Do you know if there were any other folks  
 17 that were interviewed?

18 A. I don't.

19 Q. Do you know if there were other folks who  
 20 applied besides these two?

21 A. I don't.

22 Q. Do you know if you ever knew that and you  
 23 just don't recall now or you just wouldn't have been  
 24 involved in that part of it?

25 A. I only recall two.

Page 23

1 other than New Mexico? I think in Washington? Do I  
 2 recall that correctly?

3 A. Correct.

4 Q. Any other state?

5 A. No.

6 Q. How long have you worked as a school  
 7 administrator total?

8 A. About 30 years.

9 Q. So in that time as a school administrator,  
 10 has it been the actual practice of the districts you  
 11 have been in that the principal's recommendation is  
 12 generally followed or is that too general for you to  
 13 really answer?

14 MS. GURULE: Object to form, foundation.

15 A. Generally followed. The principal is the  
 16 CEO of that building.

17 Q. So when Ms. Sanchez recommended that you  
 18 hire Ms. Cumming, you didn't have any reservation  
 19 about doing that? Is that fair?

20 A. No reservation.

21 Q. Did you ever actually meet with her  
 22 face-to-face before the day -- Ms. Cumming, I  
 23 mean -- before the day of the new hire orientation  
 24 that we're going to talk about in a little bit?

25 A. I don't recall meeting her.

Page 23

Page 25

1 Q. Do you know whose writing this is on the  
 2 document?

3 A. I do not.

4 Q. It says "From Martha Sanchez." Do you  
 5 know if this is Ms. Sanchez's writing?

6 A. I do not.

7 Q. Underneath Ms. Rael's name where it's  
 8 handwritten, in parentheses it says "Local." Do you  
 9 know what that was intended to convey?

10 A. Where are you?

11 Q. Where it says "Lisa Rael."

12 A. Over here?

13 Q. Yes, sir. Underneath there it has the  
 14 word in parentheses "Local." Do you know what  
 15 that's intended to tell whoever reads this document?

16 A. I don't, other than to me looking at this  
 17 would be someone that lives in the area or is from  
 18 the area.

19 Q. And why would that be of note, do you  
 20 know?

21 A. No, I do not.

22 Q. Did you ever visit with Ms. Rael before  
 23 she came to work for Questa? Did you ever interview  
 24 her or talk with her before there was an offer made  
 25 to her?

7 (Pages 22 to 25)

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1 A. No.  
 2 Q. So do you have any knowledge about the  
 3 accuracy or lack of accuracy as to any of the notes  
 4 about Ms. Rael or Ms. Cumming that are written here  
 5 on this document?

6 A. No.  
 7 Q. Do you recall after Ms. Cumming's  
 8 interview, which I'm going to want you to assume  
 9 that that was on July 31st, okay? Because I'm  
 10 looking at Exhibit 3 here -- excuse me, Exhibit 2,  
 11 where they talk about that being the date. I take  
 12 it back. I'm sorry. Exhibit 3. The date of this  
 13 document is 7/31/12. Do you think I read that  
 14 right?

15 A. On the date?

16 Q. Yes, sir.

17 A. Yes.

18 Q. So let's assume the interview took place  
 19 on 7/31/12. Do you recall calling Ms. Cumming the  
 20 next day on August 1st to ask her whether she would  
 21 want to work for the Questa school district? And if  
 22 it helps, it's my understanding that both you and  
 23 Ms. Sanchez were on the phone at the same time in  
 24 that phone call.

25 A. I do not recall that phone call. I do

Page 27

1 recall having a conversation with Ms. Cumming on the  
 2 phone. I don't recall who was present or if I  
 3 called her or she called me.

4 Q. Do you recall asking Ms. Cumming a  
 5 question -- and this may be a paraphrase but  
 6 something along the lines of, "Where do you see your  
 7 classroom in five years?" Do you recall that?

8 A. No, I do not.

9 Q. Is that a question that you would, in your  
 10 work as a school administrator, commonly ask folks  
 11 who are interviewing for a position?

12 A. I would ask that question of an  
 13 administrator but I have never asked that of a  
 14 teacher.

15 Q. You have never asked it of an applicant  
 16 for a teaching position?

17 A. Not that I recall.

18 Q. Is it that you don't have a recollection  
 19 of asking Ms. Cumming that question or you just  
 20 don't believe that you did?

21 A. I don't have a recollection.

22 Q. So you might have but it's five years ago  
 23 so you don't recall that possibly; is that fair?

24 A. I don't recall.

25 Q. Do you recall in the first conversation

Page 28

1 that you would have had with my client about coming  
 2 to work at Questa offering her a position at  
 3 Costilla?

4 A. I don't recall offering the position.  
 5 What I recall her responding -- like I said, I  
 6 didn't know it was a call from her. That's what I'm  
 7 assuming in my recollection, saying that she didn't  
 8 want to take a job in Costilla. My response was,  
 9 "We only have a job in Costilla." She mentioned  
 10 Alta Vista. I told her I would look into it.

11 Q. So you don't recall talking to her about a  
 12 job at Costilla and her response being, "I'll think  
 13 about it" and her intending to go meet with  
 14 Ms. Sanchez to look at the school in the following  
 15 day or two?

16 A. I don't recall that.

17 Q. Do you think that did not happen or you  
 18 just don't recall it today?

19 A. I don't recall it.

20 Q. Before the new hire meeting, which was  
 21 August the 6th, I'm going to represent to you and I  
 22 would like you to assume that, please, did you have  
 23 any other conversations with Ms. Cumming?

24 A. The day of the orientation, yes.

25 Q. Yeah, before that, though, did you have

Page 29

1 any other conversations other than the phone call  
 2 that we were just talking about?

3 A. No.  
 4 Q. So if you would then, I want to go to that  
 5 new hire meeting. That was on a Monday, August 6th.  
 6 Does that sound right?

7 A. Yes.

8 Q. And do you recall what time of day you  
 9 would have begun that meeting?

10 A. Not exactly, but it would have been early,  
 11 8:30, 10:00 o'clock.

12 Q. Do you recall that you led the meeting?  
 13 You started the meeting up?

14 A. What I did was I introduced the  
 15 facilitator of the meeting.

16 Q. Okay.

17 A. And I left.

18 Q. Who was that?

19 A. Dr. Harrell Holder.

20 Q. Harrell?

21 A. Harrell, H-A-R-R-E-L-L.

22 Q. And who is Dr. Holder?

23 A. Dr. Holder at the time was a consultant  
 24 with the Regional Education Center.

25 Q. Do you know if he still is?

8 (Pages 26 to 29)

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1 A. I would have offered her the position.  
 2 Q. I'm not done. I'm sorry, Mr. Herrera, let  
 3 me finish.  
 4 A. Okay.  
 5 Q. It says she refused the offer and  
 6 Mr. Vigil's description is that she then refused the  
 7 position. So I don't understand how that happened.  
 8 Because the first time in the telephone conversation  
 9 you weren't offering the position, right?  
 10 A. Correct.  
 11 Q. You didn't offer it until the meeting when  
 12 you pulled her out of the new hire meeting, correct?  
 13 A. Correct.  
 14 Q. So when did she have the opportunity to  
 15 refuse it a second time as this response states, do  
 16 you know?  
 17 A. The offer would have been -- probably  
 18 would have been communicated by the principal to her  
 19 when the principal notified her the position -- that  
 20 she was offering her a position at Rio Costilla.  
 21 Q. Do you know that Ms. Sanchez made that  
 22 offer to my client to work at the Costilla school?  
 23 A. I'm assuming yes, because of the phone  
 24 call from Ms. Cumming to me asking me that she is  
 25 not interested in Rio Costilla, she is interested in

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1 A. I lived on campus, the Questa campus, in a  
 2 teacherage that they had.  
 3 Q. So your statement that's marked as Exhibit  
 4 5, do you know who typed this document up?  
 5 A. No, I do not.  
 6 Q. On the second page, is that your  
 7 signature, sir?  
 8 A. That is.  
 9 Q. And is that your writing where it says  
 10 1/7/2013?  
 11 A. Yes.  
 12 Q. Do you know where you were when you signed  
 13 that document?  
 14 A. I do not.  
 15 Q. Is this accurate that you told my  
 16 client -- the very last sentence on the first page  
 17 of your statement, sir. Is this accurate that you  
 18 told her she could attend the new staff orientation  
 19 at the Questa boardroom? Is that correct?  
 20 A. Yes.  
 21 Q. And you did tell Ms. Cumming that?  
 22 A. Yes.  
 23 Q. Why would she be attending the new staff  
 24 orientation if she had not been offered a position  
 25 yet?

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1 Alta Vista. That's when I responded that I would  
 2 check to see what there was available, if that was  
 3 the case.  
 4 Q. So this response, if one were to read this  
 5 paragraph that we have been looking at, it seems to  
 6 be all of one piece. That wouldn't be accurate; is  
 7 that true?  
 8 A. Yes.  
 9 Q. And do you recall having the conversation  
 10 with my client about her not wanting the Costilla  
 11 job, among other reasons, because it's a further  
 12 drive from her home in Taos?  
 13 A. Yes.  
 14 Q. And it's not actually 15 miles, it's  
 15 actually 20; is that true?  
 16 MS. GURULE: Objection.  
 17 Q. This says 15 but it's 20, right?  
 18 MS. GURULE: Same objection.  
 19 A. I don't know.  
 20 Q. Where do you live, sir?  
 21 A. Where do I live?  
 22 Q. Yes, sir.  
 23 A. I live in Santa Fe.  
 24 Q. Where did you live at this time when you  
 25 worked here?

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1 MS. GURULE: Object to form, foundation.  
 2 A. Ms. Sanchez had offered her the position.  
 3 She had called -- Ms. Cumming had called me to ask  
 4 if there was a position at Alta Vista. I did not  
 5 know, but I told her if she wanted to attend the  
 6 orientation she was welcome.  
 7 Q. Why would you tell someone to attend that  
 8 new staff orientation who had not been offered a  
 9 job?  
 10 MS. GURULE: Object to form, foundation.  
 11 A. Because I felt based on the recommendation  
 12 of the principal that she would be a good hire.  
 13 Q. But she had refused the Costilla job  
 14 already is what you told me today, right?  
 15 A. She had told me that she preferred Alta  
 16 Vista.  
 17 Q. And that was in the phone call?  
 18 A. Correct.  
 19 Q. Just so you and I understand each other,  
 20 I'm going to talk about your conversation with the  
 21 phone call versus your conversation in the meeting  
 22 face-to-face. We'll just use the term meeting; is  
 23 that okay with you?  
 24 A. Yes.  
 25 Q. Okay. So in the response that we were

11 (Pages 38 to 41)

1 just looking at that your lawyer for the district  
 2 drafted, it says that Ms. Cumming refused the offer  
 3 at Costilla. Did that not take place in the  
 4 telephone call?

5 MR. COPPLER: Just so I'm clear, are you  
 6 referring to Exhibit 5 or Exhibit 4?

7 MR. WHITE: Right now I'm talking about  
 8 what Exhibit 4 says, the response to the charge.

9 Q. Because in it, it says, "Superintendent  
 10 Roy Herrera verbally offered Ms. Cumming a teaching  
 11 position at Rio Costilla," and then it says,  
 12 "However, Ms. Cumming refused the offer." So what I  
 13 want to be clear on, Mr. Herrera, is where did that  
 14 refusal take place? In that telephone call or in  
 15 the meeting?

16 A. In the meeting.

17 Q. Did Ms. Sanchez ever tell you that  
 18 previous to the meeting Ms. Cumming refused the job  
 19 at Costilla?

20 A. No.

21 Q. So if, in fact, she did do that she never  
 22 advised you of that before the meeting on Monday?  
 23 Is that true?

24 A. Yes.

25 Q. And do you have a specific recollection of

1 telling Ms. Cumming that she could attend the new  
 2 staff orientation meeting or do you think that  
 3 Ms. Sanchez did that?

4 A. I did.

5 Q. You did? The second page of your  
 6 statement, Mr. Herrera, Exhibit 5, you say,  
 7 "Principal Sanchez informed me that Ms. Cumming was  
 8 perfect for the position at Rio Costilla." Why was  
 9 that?

10 A. She was clarifying that there was not a  
 11 position available at Alta Vista and that  
 12 Ms. Cumming was a good fit for Rio Costilla.

13 Q. Why? She was perfect for the position, it  
 14 says here. This is your statement. Why was that?

15 MS. GURULE: Object to form.

16 A. She was strong in math.

17 Q. So when Ms. Cumming came to your office to  
 18 that meeting out of the new staff orientation  
 19 meeting, was anyone else present?

20 A. No.

21 Q. Did you document that meeting in any way?  
 22 A. I did not.

23 Q. Did you have any conversation with  
 24 anybody, let's say that same day, about that  
 25 meeting? For example, did you tell Ms. Sanchez what

1 had transpired in the meeting?

2 A. Yes.

3 Q. Did you talk to anyone else about what had  
 4 happened in the meeting like you talked to  
 5 Ms. Sanchez?

6 A. Not that I recall.

7 Q. Did you tell Ms. Cumming that you would  
 8 have to rescind the job offer that had been made to  
 9 her?

10 A. I believe I offered her the job. She said  
 11 no so I told her I would have to rescind it.

12 Q. So when you used the word "rescind," what  
 13 you are telling me is you were referring to the  
 14 offer at Rio Costilla, correct?

15 A. Correct.

16 Q. But she had just refused it, correct?

17 A. I had just offered it.

18 Q. And she said no?

19 A. She said no.

20 Q. Then you said, "Well, then I'll have to  
 21 rescind the offer"?

22 A. Correct.

23 Q. How do you rescind an offer someone has  
 24 already refused. I don't think I understand that.

25 MS. GURULE: Object to the form and

1 foundation.

2 MR. COPPLER: Object to form and  
 3 foundation.

4 Q. What did you mean when you said that?

5 MS. GURULE: Object to form and  
 6 foundation.

7 A. Just to let her know the job would no  
 8 longer be available.

9 Q. What did she say?

10 A. She thanked me, and I told her that I  
 11 would pay her for the day and she said thank you and  
 12 she left.

13 Q. Did she express anything to you as far as  
 14 being upset? Did she get tearful? Did she ask you  
 15 why? Did she respond in any way like that?

16 A. No.

17 (Note: Exhibit 6 marked.)

18 Q. So the very next day -- Exhibit 6 -- you  
 19 offered Lisa Rael a job at Alta Vista, correct?

20 A. I am not aware of that. I see the  
 21 signature on it but I would assume that it was Rio  
 22 Costilla. There was only -- that was the only  
 23 position open.

24 Q. Well, let me represent to you that ever  
 25 since 2012 Ms. Rael has worked at Alta Vista,

1      **Mr. Herrera.** Do you know how that came to be?

2      A. No.

3      Q. So this memo that has your name on it you

4      did not author? Is that right?

5      A. That has my name on it.

6      Q. That is your signature, is it not?

7      A. That's correct.

8      Q. Do you have any independent recollection

9      of Ms. Rael going to work at Rio Costilla?

10     A. No.

11     Q. If that is true, what I just told you,

12     that she was hired to work at Alta Vista, do you

13     know why that happened or how that happened?

14     A. No.

15     (Note: Exhibit 7 marked.)

16     Q. Let me show you the second exhibit that

17     was provided to the federal government, to the EEOC,

18     in response to my client's complaint that she had

19     been discriminated against. I am marking this as

20     Exhibit 7. This is what the district's lawyer sent

21     to the EEOC in response to a request to list the

22     hires, the teaching hires, in the district. And it

23     shows Ms. Rael was hired on 8/13/2012 to work at

24     Alta Vista Elementary. Do you see that?

25     A. Yes.

1      with Ms. Rael about offering her a job?

2      A. No.

3      Q. Do you think you did and it's five years

4      later and you don't recall it or do you think you

5      did not? If you know?

6      A. I do not recall it.

7      Q. Do you recall announcing at a school board

8      meeting on August the 7th that Ms. Rael was being

9      hired to work at Alta Vista?

10     A. No, I do not.

11     Q. Do you believe that that did not happen or

12     just with the passage of time you don't recall it?

13     A. I do not recall.

14     (Note: Exhibit 8 marked.)

15     Q. I will show you what we're marking as

16     Exhibit 8 to your deposition. Do you recall ever

17     seeing this letter?

18     A. I don't recall.

19     Q. Do you think that you received it and now,

20     again, five years later you just don't recall? Or

21     do you think that you did not receive this?

22     A. I do not recall.

23     Q. From your previous testimony I'm going to

24     assume that you do not recall ever saying to my

25     client that you can't tell her why she was not going

1      Q. Can you explain how that could be the case

2      when you're telling me, and this response that your

3      lawyer sent into the federal government tells us,

4      that there was no job at Alta Vista?

5      MS. GURULE: Object to form, foundation.

6      Q. Do you know how that came to be?

7      A. No.

8      Q. Have you ever seen that document before?

9      A. No, I have not.

10     Q. Do you know how old Ms. Rael is?

11     A. No, I do not.

12     Q. Do you know her or are you acquainted with

13     her in any way?

14     A. No.

15     Q. Do you know if she is related to anyone

16     else that serves as a board member in Questa?

17     A. No, I do not.

18     Q. Do you know if she is related to anyone

19     else employed by the district?

20     A. No, I do not.

21     Q. Before this notice of employment that's

22     marked as Exhibit 6, the one that your signature on

23     it --

24     A. Yes.

25     Q. -- do you recall having any conversation

1      to come to work at Questa school district?

2      MS. GURULE: Object to form, foundation.

3      A. No.

4      Q. You don't recall saying that?

5      A. I never would have said that.

6      Q. You don't think you did say that?

7      A. No.

8      Q. Do you know, as far as the interview

9      process is concerned, at Questa district if the

10     committee doing the interviewing produces notes from

11     their interview of each candidate?

12     A. I'm not sure about Questa, but usually

13     there's notes taken on candidates.

14     Q. And would it be -- and I know you don't

15     know about Questa specifically, but from your

16     experience as an educator, as a school

17     administrator, can you think of any reason why we

18     would be missing the interview notes only from

19     Ms. Sanchez concerning the interview with my client?

20     A. No.

21     MS. GURULE: Object to form, foundation.

22     Q. Have you ever had to file a complaint,

23     whether formally or informally, that you felt that

24     you had been discriminated against?

25     A. No. I do not recall that.

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- 1 A. No.  
 2 Q. If Ms. Sanchez had offered Ms. Cumming a  
 3 job at the Alta Vista campus, would she have been  
 4 required to seek your approval for that offer?  
 5 A. Yes.  
 6 Q. Did she ever seek that approval in any  
 7 form from you?  
 8 A. Not that I recall.  
 9 Q. Did she ever notify you that she had made  
 10 any kind of offer for employment to Ms. Cumming at  
 11 the Alta Vista campus?  
 12 A. No.  
 13 Q. And at that time in 2012 was the Rio  
 14 Costilla school part of the Questa Independent  
 15 School District?  
 16 A. Yes.  
 17 Q. And is it your understanding in 2012 that  
 18 you, as the representative and the hiring and firing  
 19 authority at Questa Schools, made a job offer to  
 20 Ms. Cumming for employment at the Questa Independent  
 21 School District?  
 22 A. Yes, at Rio Costilla.  
 23 Q. And was it your understanding in August of  
 24 2012 that she refused that position?  
 25 A. Yes.

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- 1 to you during any of the conversations you had with  
 2 her that she wanted a job teaching Pre-K or  
 3 kindergarten?  
 4 A. No.  
 5 Q. I think you confirmed this but I want to  
 6 be sure. Did anyone at the school board at the time  
 7 approach you and tell you that you had to hire white  
 8 people or not hire white people?  
 9 A. No.  
 10 Q. They may have used a different word.  
 11 Caucasian or anything like that?  
 12 A. No.  
 13 Q. And Mr. Herrera, in your experience as the  
 14 superintendent of a school district in the state of  
 15 New Mexico, are you authorized to direct the  
 16 teacher, even current employees, to change their  
 17 classroom as far as class assignments?  
 18 A. Yes. May I get some water?  
 19 MR. COPPLER: I will get that quickly.  
 20 Q. Have you ever had -- have you ever  
 21 received any subsequent information about  
 22 Ms. Cumming from Ms. Valerie Trujillo?  
 23 A. No.  
 24 Q. Have you ever spoken with Ms. Valerie  
 25 Trujillo about the job offer in 2012 to Ms. Cumming?

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- 1 Q. And thereafter as you told counsel you  
 2 rescinded the offer?  
 3 A. Yes.  
 4 Q. Mr. Herrera, I understand that you were  
 5 not employed at Questa Schools for very long so I  
 6 understand if you don't remember. And I just want  
 7 to ask you, do you have any independent knowledge of  
 8 what grade or classroom Ms. Lisa Rael was assigned  
 9 to teach at?  
 10 A. No, I don't. I'm sorry, I should have let  
 11 you finish.  
 12 Q. That's okay.  
 13 A. No, I do not.  
 14 Q. Do you know if she was assigned to teach  
 15 third grade?  
 16 A. No, I do not.  
 17 Q. Do you know at all what grade she was  
 18 assigned to teach?  
 19 A. No, I do not.  
 20 Q. If the Questa school business records  
 21 reflect that Ms. Rael in fact taught Pre-K and  
 22 kindergarten for Alta Vista school, do you have any  
 23 reason to dispute that?  
 24 A. No, I do not.  
 25 Q. Did Ms. Cumming ever express an interest

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- 1 A. No.  
 2 Q. And Ms. Valerie Trujillo, who was also a  
 3 superintendent at Questa, was on the hiring  
 4 committee for these positions in 2012, correct?  
 5 According to Exhibit 2?  
 6 A. According to Exhibit 2, yes.  
 7 Q. Thank you. I'll pass the witness.  
 8 EXAMINATION  
 9 BY MR. WHITE  
 10 Q. Just a couple questions. Mr. Herrera, do  
 11 you know, looking at Ms. Rael's license, what it  
 12 means when it says that she has a Limited level 1  
 13 Extension License?  
 14 A. No, I do not.  
 15 Q. That's all I have.

16 MR. COPPLER: He will read and sign. Send  
 17 it to me. Four to a Page, just e-mail.

18 (Note: The deposition was concluded at  
 19 4:37)

16 (Pages 58 to 61)